

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Tyler Harris,

Plaintiff,

V.

## State of Nevada Unemployment,

Defendant.

Case No. 2:24-cv-01870-DJA

## Order and **Report and Recommendation<sup>1</sup>**

**Defendant.**

Under 28 U.S.C. § 1915 Plaintiff is representing himself in this action and has filed a renewed application to proceed without paying the filing fee (known as an application to proceed *in forma pauperis*). (ECF No. 6). Plaintiff also submitted a complaint with his initial application to proceed *in forma pauperis*. (ECF No. 1-1). Also before the Court is Plaintiff's motion for expedition, asking the Court to expedite its decision on Plaintiff's application to proceed *in forma pauperis*. (ECF No. 7).

Because the Court finds that Plaintiff's application to proceed *in forma pauperis* is complete, it grants the application to proceed *in forma pauperis* and screens his complaint. However, because the Court finds that Plaintiff attempts to sue an immune defendant, it

<sup>1</sup> This case is currently part of the consent program established under First Amended General Order 2023-11. See First Amended General Order 2023-11, United States District Court for the District of Nevada, [chrome-extension://efaidnbmnnibpcajpcgclefindmkaj/https://www.nvd.uscourts.gov/wp-content/uploads/2024/12/GO-2023-11-Amended-General-Order-Assignment-to-MJs.pdf](https://www.nvd.uscourts.gov/wp-content/uploads/2024/12/GO-2023-11-Amended-General-Order-Assignment-to-MJs.pdf) (Dec. 9, 2024). As a result, the undersigned magistrate judge is the only judge assigned to the case. However, Defendant State of Nevada Unemployment has not yet appeared in this action and so cannot consent to the undersigned's jurisdiction over this matter. Because the undersigned magistrate judge is recommending dismissal of Plaintiff's complaint without leave to amend, the undersigned magistrate judge will issue a recommendation and request that the Clerk of Court randomly assign this case to a district judge. See 28 U.S.C. § 636(b)(1)(A).

1 recommends dismissing his complaint without leave to amend. Because the Court has addressed  
2 Plaintiff's application in this order, it denies his motion for expedition as moot.

3 **I. *In forma pauperis* application.**

4 Plaintiff filed the affidavit required by § 1915(a). (ECF No. 6). Plaintiff has shown an  
5 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed  
6 *in forma pauperis* will be granted under 28 U.S.C. § 1915(a). The Court will now review  
7 Plaintiff's complaint.

8 **II. Legal standard for screening.**

9 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the  
10 complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is  
11 legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks  
12 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).  
13 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend  
14 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the  
15 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70  
16 F.3d 1103, 1106 (9th Cir. 1995).

17 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a  
18 complaint for failure to state a claim upon which relief can be granted. Review under Rule  
19 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d  
20 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of  
21 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*  
22 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual  
23 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the  
24 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v.*  
25 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations  
26 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,  
27 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory  
28 allegations, do not suffice. *Id.* at 678. Where the claims in the complaint have not crossed the

1 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.  
2 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings  
3 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal  
4 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

5 Federal courts are courts of limited jurisdiction and possess only that power authorized by  
6 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.  
7 § 1331, federal courts have original jurisdiction over “all civil actions arising under the  
8 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when  
9 federal law creates the cause of action or where the vindication of a right under state law  
10 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277  
11 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the  
12 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a  
13 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”  
14 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal  
15 district courts have original jurisdiction over civil actions in diversity cases “where the matter in  
16 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of  
17 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete  
18 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each  
19 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

20 **III. Screening the complaint.**

21 Plaintiff sues the State of Nevada Unemployment Office for damages, alleging claims  
22 related to the denial of his unemployment claim. (ECF No. 1-1). The Court liberally construes  
23 Plaintiff’s complaint as bringing claims against the Nevada Department of Employment, Training  
24 & Rehabilitation (“DETR”). Plaintiff alleges that the Court has federal question jurisdiction over  
25 his claims and that his claims arise under “Title 41,” however, Plaintiff does not further identify a  
26 federal statute. (*Id.* at 3). Plaintiff alleges that DETR denied his unemployment claim and “shut  
27 off[f]” [his] online appeal form” and will not answer his calls. (*Id.* at 4). Plaintiff asserts that he  
28 has been forced to donate plasma to afford filing an appeal. (*Id.*).

1           The Court recommends dismissing Plaintiff's complaint without leave to amend because  
2 amendment would be futile. DETR is an agency of the State of Nevada. However, the Eleventh  
3 Amendment bars citizens from suing a state or its agencies unless the state has waived such  
4 immunity or Congress has abrogated such immunity by statute. U.S. Const. amend. XI; *see*  
5 *also Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 54 (1996). The State of Nevada has explicitly  
6 refused to waive its immunity to suit under the Eleventh Amendment. Nev. Rev. Stat. 41.031(3).  
7 So, Plaintiff's claims against DETR fail as a matter of law.

8           Even if Plaintiff's claims were not barred by the Eleventh Amendment, the Nevada  
9 Revised Statutes provide that a person seeking unemployment benefits must first exhaust his or  
10 her administrative remedies before filing a lawsuit. Nev. Rev. Stat. 612.525(1). A failure to  
11 comply with these statutory requirements constitutes grounds for dismissal. *Walker v. Nev.*,  
12 *Dep't of Emp. and Sec.*, No. 2:09-cv-2036-GMN-GWF, 2011 WL 167545, at \*1 (D. Nev. Jan. 19,  
13 2011). However, Plaintiff provides no documentation demonstrating that he has timely appealed  
14 DETR's alleged denial of his unemployment claim. Additionally, if Plaintiff has timely appealed  
15 DETR's decision, his request for a review of that appeal should be brought before the District  
16 Court for the State of Nevada in the County in which the work was performed, rather than the  
17 United States District Court. Nev. Rev. Stat. 612.530; *Ullauri-Moron v. Nev. Dep't of Emp.,*  
18 *Training, and Rehabilitation*, Case No. 2:12-cv-01569-JCM-CWH, 2012 WL 4891722, at \*2 (D.  
19 Nev. Sept. 6, 2012). So, the Court recommends dismissing Plaintiff's complaint without leave to  
20 amend.

21 **IV. Plaintiff's motion to expedite.**

22 Plaintiff moves the Court to expedite its review of his application to proceed *in forma*  
23 *pauperis*. (ECF No. 7). Because the Court has determined Plaintiff's application in this order, it  
24 denies his motion as moot. Plaintiff is also advised that the Court handles hundreds of cases and  
25 cannot move motions in front of others that have been waiting for consideration without very  
26 good reason. Sometimes it may take several months for the Court to consider a motion.

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## ORDER

**IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma pauperis* (ECF No. 6) is **granted**. Plaintiff shall not be required to pre-pay the filing fee. Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of a security therefor. This order granting leave to proceed *in forma pauperis* shall not extend to the issuance and/or service of subpoenas at government expense.

**IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to file Plaintiff's complaint (ECF No. 1-1) on the docket but shall not issue summons.

**IT IS FURTHER ORDERED** that Plaintiff's motion to expedite (ECF No. 7) is **denied as moot.**

**IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to remove this case from the consent program and randomly assign a district judge to this case.

**IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to send Plaintiff a copy of this order.

## **REPORT AND RECOMMENDATION**

**IT IS THEREFORE RECOMMENDED** that the complaint (ECF No. 1-1) be dismissed without leave to amend.

## NOTICE

Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within (14) days after service of this Notice. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985), *reh'g denied*, 474 U.S. 1111 (1986). The Ninth Circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual

1 issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991);  
2 *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

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4 DATED: January 2, 2025

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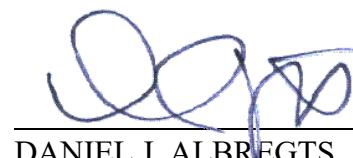
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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE